

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
CASE NO.: 07-cv-6034

JULIA PICHARDO

Plaintiff,

-against-

NEW YORK UNIVERSITY and  
JANE DOE – Student,

Defendants.

**ATTORNEY’S AFFIDAVIT IN SUPPORT OF  
MOTION TO DISMISS PURSUANT TO F.R.C.P. § 41(b)**

TO: THE HONORABLE MICHAEL H. DOLINGER  
UNITED STATES MAGISTRATE JUDGE

DANIEL J. FOX, an attorney at law admitted to practice before the Courts of the State of New York and the Southern District of New York, upon penalty of perjury, duly affirms as follows:

1. I am an associate of the firm Goldberg & Associates, attorneys for Defendant NEW YORK UNIVERSITY (“NYU”), and as such, I am familiar with the facts and circumstances of this matter as reflected in the file maintained by this office.

2. I respectfully submit this Affidavit in further support of NYU’s motion pursuant to F.R.C.P. § 41(b) for an Order dismissing Plaintiff’s Complaint in its entirety on the grounds that Plaintiff has failed to comply with this Court’s Orders, serve any discovery or prosecute her lawsuit in any manner.

3. True copies of Plaintiff’s Complaint and NYU’s Answer and Affirmative Defenses are annexed hereto collectively as Exhibit “A”.

4. A copy of this Court's Order dated September 20, 2007 is annexed hereto as Exhibit "B".

5. Copies of NYU's Demand for Production of Documents and Demand for Interrogatories are annexed hereto collectively as Exhibit "C"

6. A true copy of the November 29, 2007 letter from the undersigned counsel of NYU to Plaintiff's former attorneys, the law firm of Joseph T. Mullen, Jr. & Associates, is annexed hereto as Exhibit "D".

7. A copy of this Court's Order dated January 16, 2008 is annexed hereto as Exhibit "E".

8. A true copy of the February 21, 2008 letter from the undersigned counsel of NYU to Plaintiff is annexed hereto as Exhibit "F".

9. A true copy of the March 24, 2008 letter from the undersigned counsel of NYU to the Honorable Michael H. Dolinger, which was also provided to Plaintiff, is annexed hereto as Exhibit "G".

10. A true copy of the April 10, 2008 letter from the undersigned counsel of NYU to Plaintiff forwarded by Certified Mail Return Receipt Requested together with the receipt evidencing Plaintiff's receipt of the letter is annexed hereto as Exhibit "G".

11. Plaintiff has never contacted the undersigned counsel for NYU despite repeated requests for her to do so. Moreover, Plaintiff has failed to prosecute her lawsuit against NYU in any manner.

12. Furthermore, Plaintiff has failed to comply with this Court's Orders both while represented by counsel and as a *pro se* litigant.

**WHEREFORE**, based on the foregoing and pursuant to § 41(b) of the Federal Rules of Civil Procedure, NYU respectfully requests that this Court enter an Order dismissing Plaintiff's Complaint in its entirety, and for such other, further and different relief as is just and proper under the circumstances.

Dated: New York, New York  
May 30, 2008

Respectfully submitted,

**GOLDBERG & ASSOCIATES**  
Attorneys for NYU

By: /s/  
DANIEL J. FOX (DF-4765)  
39 Broadway, 17<sup>th</sup> Floor  
New York, New York 10006  
(212) 968-2300

Sworn to before me on  
this 30<sup>th</sup> day of May, 2008

/s/  
WILLIAM H. GRAE  
Notary Public